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● 428

Shluh MW11

[For information on habous endowments of land and other property to religious institutions for the glorification of Allah, see Categories 794 and 423.]

[Idma]

/77 cont./

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Around 1700, the Idma secured, on the side of the Tabgurt, the water from the Amerdul spring which irrigates the ground of Agersili. and, lower, /78/ the lands of Ad'erd'ur. Two documents concluded at the end of these debates confirm it. I have given the translation of them elsewhere. The a. Gasa eliminated, the conquerors were no longer uneasy about their immediate neighbors, a. Mh'nd and Imt'ddan, with whom their alliance has endured up to our day, without great vicissitudes it seems. A rapacious policy, fertile in actions of guile or of achievement, is the lot of their chiefs. The monopoly of land and brutalities seem to be the method necessary for them. Not without ripostes from the group sometimes. Tradition knows several violent deaths of the amghar-s who henceforth reign over all the present ensemble. Thus Wakrim u Bella, in 1881, was killed by the thief Bahhas, whom, at the head of the jemfa, he rounded up in his house. Abdallah Ijjiwi of the a. Sirra was assassinated during his sleep at Talmud'ft.

There is nothing surprising in the precision of such anecdotes. Among the Idma, the power of group life depends on fidelity to the past. An oral chronicle recollects, along with the memory of the struggles against the a. Gasa, that of the great chiefs whose succession, from the eighteenth century to our day, is retraced in all its details. Therefore here is a list of them. It will be given here less for its own interest than for the cachet of historicity that it impresses on the life of these small societies.

/The following paragraph is in small type in the original source./ The farthest that one goes back, it is a great amghar of the family of the Iseqqalen whose silhouette is discovered. Ih'fjj Bujma, profiting from the liquidation of the a. Gasa, procured for himself by law, violence, or ruse numerous landed estates in the valley. He was carried away by the plague epidemic of 1790, and it seems that his heirs had to disgorge (1).

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1. Text translated in our "Documents anciens sur la coutume immobilière des

[Idma]

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/78 cont./

/footnote 1 continued/ Seksawa /Old documents on the landed-property customs of the Seksawa/," R. afr., 1948, p. 391. On these epidemics at the end of the eighteenth century, an-Nâqirî, "Istiqcâ'," Arch. Mar. tr., X, p. 14; Ezziani, Le Maroc de 1631 à 1812 /Morocco from 1631 to 1812/, Houdas tr., 1886, p. 181; the number of successions in escheat is so great that the Makhzen /makhzan/ sends special agents into the Sous to collect them. In the mountains, however, it is always the commune that applies itself to these recoveries. And it does it within impeccable juridical forms.

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His uncle succeeds him: this is Moh'ammed u Yah'ya. Then follow:

Wakrim u Bella n-a. Lgerchman of Usikis.

Brahim u Yâza n-a. Ilarz of Usikis.

Moh'ammed u Lila n-a. H'addo.

Brahim u Mohammed u Zed'd'ib.

Wakrim u Bella u Lh'âjj of the Iseqqalen.

His son Moh'ammed u Bella Anono.

Wakrim u Bella.

His nephew Moh'ammed u Brahim Lh'âjj n-a. Zed'd'ib.

H'fid' u Mohammed n-a. u Lila.

Sâid u Akâyyus n-a. u Muzun (Usikis).

Abdallah Ijjiwi n-a. u Sirra of Tannsmekht.

/79/ Lah'sen u Sâid n-a. u Muzun (a. u H'aqqi of Tasselli).

Mohammed Akrray (Talmud'ât).

Lh'âjj H'fid' u Moh'ammed Wânono, father of the present am-ghar. He is violent conqueror, doubling as a flexible politician. He commanded for two years, then left on a pilgrimage.

H'fid' u Moh'ammed u Lila n-a. H'addo: he died of leprosy.

Moh'ammed u Lh'âjj: he became blind.

Lh'âjj H'fid' Wânono: he definitively recaptured the power that his family has kept up to now.

/90 cont./

(18) sacred and the profane, aptitude for history: these four characteristics are correlative.

63) Thus, then, the power of the leaders is completely temporal. It proceeds from the consensus of assemblies, which one occasionally sees meeting with a first appearance of constitutional regularity with periodic comitia, holy places, fixed procedure, etc. It is also by contractual routes, but from which he tries little by little to break away, that the chief becomes greater. He arrogates to himself more than his share of the spoils of the vanquished at the time of distributions of booty. He enlarges his lands through deceit and pressure. It is especially in this landed-property aspect that his citizens see him advance. They are sensitive to it, for it injures their material interests, but also shocks their conception of legitimacy. Deprived of popular assent, the chief tends to become a tyrant. Not without revengeful onslaughts of the jemfa-s, each time that defeat or death weakens his work. Thus tyranny appears as a phenomenon of voracity, of expansion, archaic form of economic concentration. And it stirs up reactions, of which a number of documents are the echo.

(66) /91/ This said, is it not strange that this phenomenon is reproduced at different times, with the same characteristics? For example, the Imt'ddan had their great amghar, whose power projected over the Dwiran, indeed, over the Indmaghus: Bwizugman. It is he who achieved the driving back of the a. Gasa, started more than a century before. The Idma, too, near the end of the eighteenth century, had Lh'fjj Bujma, who monopolized the lands of the valley, until the plague killed him and the community got rid of his sons.

(423) Such expansions, one will see, discover their limits in the landed-property customs and the mechanisms of local law. Thus (428) they cannot go very far. Often tradition mentions such a great personage, amghar or other, spread broadly over his landed estates, but who dies without male descendants: everything returns to the collective regulation. Such was the case of Bwizugman, and such also the one of another rich man of the high a. Abdella. These silhouettes of great chiefs are not rare. Over the

/299 cont./

The Cycle of the Founder

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[778]
(634) Sidi ^CAmer u H'addo, sometimes called Baba ^CAmer, has his tomb in a. H'adduyws, that is, in the high-mountain taqbilt that refers itself to the eponym H'addo u Yusef. This is not the place to criticize the orthodox but anachronistic Almoravide attachment of which this H'addo now forms the object. The cupola of his son, ^CAmer, between the villages of the a. Zemlal and the a. Bah'ammo, on the trail that goes up the Seksawa in the direction of Fensu, rears a modest piece of masonry, seat of a cult whose importance seems to be more and more reduced. Fossil cult, one might say. An observer noted in 1928 that only the people of Agadir n-Tsuggin, a. Bah'ammo and Uzago participated in it. But he notes also, and this is more important, that here again there is not one, but two feasts: one of avowed naturalist vocation, at the time of putting water in the ditches (March), the other coinciding with the Nativity of the Prophet. This parallelism with the cult of /300/ Lalla Aziza must hold one's attention and calls forth the same remarks, even though on a much smaller field.

127 These rather sparse elements would authorize no commentary if one did not quite opportunely have at one's disposal here old acts whose analysis is going to permit closing up the problem of the relations between the legendary tradition, successorial devolutions, and history.

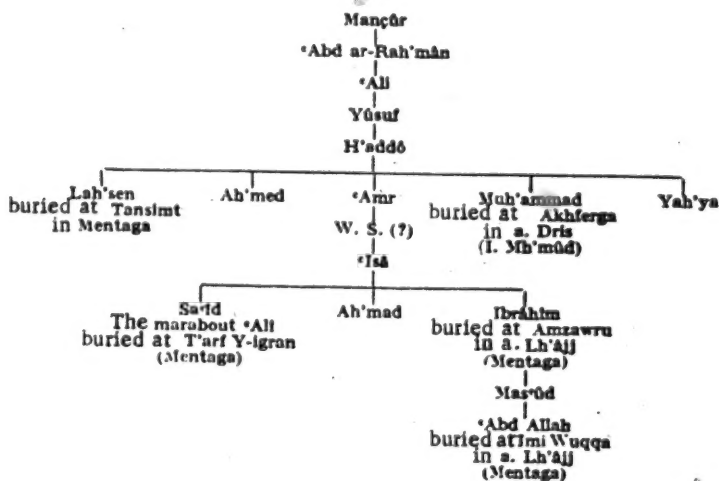
175 /The rest of the section, up to the last two paragraphs, are in
776 small type in the original source./ 1) A recent copy (late
776 ramad'an 1341 Heg.) of an act very likely found in the Mentaga
776 tribe at Tansimt. It is the waqiyya, "testamentary donation,"
428 that ^CAmr, in his lifetime and on his behalf, signified to the people of a certain number of villages: a. Bah'ammo, a. Zemlal, a. Fensu, Tasa. It was exhibited to us in the sanctuary one day when I visited it in the company of R. Montagne. It stipulates, for the benefice of the saint and for each year, one fleece per herd, the harvest of three walnut trees, three chums of butter in March, a feast in March (note that the one of the Nativity is

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175 not mentioned), and, by foye, on the first day of the Fast, the
 716 contribution of a dish of porridge duly garnished with fat; "who-
 794 ever eats of it, the h'arām will melt in his body like salt in
 viands."

- 428 There it is, to the life, one of these imposed, and undoubt-
 edly argued, chchard' stipulations, which so often form the point
 of departure of the saints' benefices. One should note also the
 archaism of the testimonial procedure (in this case, it is a matter
 of a sort of testimony by turbs, anterior or foreign to the Adular
 /fr. adoulaire/ instrumentation and at the same time to the or-
 ganized laffif). Finally, the simplicity of the details on the pu-
 rifying banquet does not lack vigor.

A genealogy follows, intended undoubtedly to determine the
 rightful claimants. Here it is.



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776 /301/ This ^cAbd Allah died in an ambush of the Zenaga, whom his curse immediately scatters and exterminates. He left as heir his cousin ^cAli b. Sa'īd, whom this mention undoubtedly identifies with the author of the exception pleadings. Whatever the authenticity of the act may be, it offers the interest of constituting hagiological liaison with the South face of the Atlas and the groups such as Mentaga, I. Mh'mud, today detached from the Seksawa, but whom the Almohade documents align with them in the Genfisa unit, whatever this unit may have been. It will be equally interesting to compare this genealogy with the one that the following documents indicate.

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127 2) If, taking into account the general remarks that have been made concerning the historicity of this type of document, the wagīyya of ^cAmr originates in a past hardly placeable, but certainly very ancient, the two acts whose analysis is here now go back only, but more authentically, to our sixteenth century, a period of intense religious fermentation in the Sous, and even in the part of the Atlas that had to submit to the repercussions of the Sa'fīdian thrust, resisting it more than participating in it.

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776 Here is first of all a document dated 999 Heg.: 1591. The first part is anecdotal and concerns the Almoravides, to whom, in spite of all the chronological possibilities, Yūsef, the father of ^cAmr, is attached. This anachronism, probably older than the sixteenth century, has already been pointed out. In this way, the genealogist goes back to Quraych, starting from a Sa'īd who descended, on the twelfth generation, from ^cAmr. Let us note that the lapse of three centuries thus indicated would carry back, for the ancestor, to the end of the thirteenth century, which corresponds roughly to Khaldūnian chronology. Let us note also that the attachment to the saint, which is made by an ^cAbd Allah, does not coincide with the genealogy given above. But this ^cAbd Allah, who is perhaps the historical personage contemporaneous with Lalla Aziza and Ibn Qunfūdh, has a name that appears often in these genealogies. Not always in the same place: sometimes as son, sometimes as only great-grandson, but not without this repetition offering, in a matter so conjectural, some element of stability. Likewise a T'alh'a is mentioned here as a descendant on

/301 cont./

175 the fourth generation. This name also appears in other docu-
602 ments. And the a. D'alh'a, still represented, are given by oral
428 tradition as the only direct descendants of the ancestor in Haut
776 Seksawa. The coincidence is at least singular.

In extremely obscure terms, the genealogist makes a sort of restatement of the rightful claimants of the benefice. These re-statements had to be frequent, since they were reflecting competition between heirs. According to our document: "There are the sons of the Arab woman among the Awlād Tah'jamt (?); they are the sons of the Berbère /Berber/ woman (^cajāmiyya). As for the Awlād Sidi Yah'yā b. Fāris, they are the sons of Yah'ya b. H'addō. As for Buzīd, the succession does not count him among the rightful claimants. As for the Awlād Yūsef b. H'addō b. s. Abī Bakr, ^cAbd Allah integrated them among his own. As for slavery, he integrated it for a third. As for the sons of Sulaymān b. ^cAmr, they emigrated."

Such a classification reflects a syncretism effected between different /302/ branches, different stages, or even different origins of the line of ^cAmer u H'addō. The author of this syncretism might be ^cAbd Allah, the contemporary of Lalla Aziza.

(567) Let us note in passing an interesting distinction between Arab or Berbère /Berber/ mothers, and the mention of slaves or servants among the beneficiaries, according to a process, which, in the present case of Z'init', has resulted in making them the only rightful claimants. Let us finally note the names of Yah'ya and Sulaymān, historical personages who are precisely those whose tombs are still shown today.

3) Here is an act from the seventeenth century. It presents the peculiarity of having a known signatory, sidi l-H'asān b. Muh'ammad, ancestor of the line of the marabouts of Asstif, and whose signature is rather frequently displayed on old Seksawa papers. The act is from 1086 Heg.: 1675. He too makes a re-statement of the beneficiaries of his time, at the same time that he justifies this position by their connection to one Mah'ammad, fifth descendant of ^cAbd Allah b. ^cAmr. At this time there are six parts coming, not to individuals, but to families designated

/302 cont./

175 by alt. The names of these families are: Abū'l-^cArūf, Ulwāh',
602 Mbārek, ^cAbd as-Salām, Sa^cīd u H'sayn, Mbār u Belgāsem. No
428 other remark is to be made concerning the dispersion of the line,
776 thus confirmed from the seventeenth century, and which must have
ended in a total effacement, since today only the guardians of the
tomb claim the benefice, but as foqra and not as descendants.

[613] Nevertheless, it is necessary to note that one of their ikhs bears
the interesting name of a. Iz'm, "people of the Lion," and it is
known that this surname is attested to historically in the chronicle
of the kings of the fourteenth century.

4) Other old Seksawa acts concern the history of the ensemble
of the populations of the high valley rather than simply that of the
saint. Thus, a ccadaqa of 976 Heg.: 1569, a genealogy of the a.
D'alh'a of 1144 Heg.: 1732, and a genealogy of the a. Umgan, an
ancient population vanished today, but claiming in this act of 1244
Heg.: 1828 an ancestry of ^cAmr, again through ^cAbd Allah, and
which offers the curious likelihood that the lapse of twenty genera-
tions that is detailed there name by name indeed takes us back, it
too, to the fourteenth century.

176 The conclusion to be drawn from these documents is that they
[175] postulate, certainly not an attested filiation from the royal person-
[602] ages of the Middle Ages up to our day, but a belief in this filiation.
From our point of view, this comes to almost the same thing.
Nevertheless, the cult that they authorize is neither that of an an-
cestor nor that of a hero. Significant thing. In spite of his liaison
with the Eponym, it is as a mediocre saint, for whom it seemed
necessary to recreate a legend of early epoch, that Sidi ^cAmer very
indifferently survives. This is so true that in the course of the ages
periodical reclassifications seem to have intervened, bringing to
light a list of rightful claimants more and more full and indistinct,
until it finally disappeared as a consequence of its own super- /303/
abundance or the forgetfulness of the faithful. Thus are fixed, at
chronologically identifiable stages of the tradition, some names,
among which the one of a certain ^cAbd Allah stands out, and some
places where one finds mention of the principal groups of the
circum-Tichka ensemble, this true cadre of our story.

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• [428] 2) Right henceforth acquired by the wife to her part of inheritance anticipated by the law, that is, half of one part of the male heir, conforming to the fiqh. Her right to the acquiescence remains dependent on an extension of one year of common life.

Conventional part (and facultative in principle):

- 1) The chchard', "stipulated marriage settlement" by the bridegroom for the benefit of the bride;
- 2) The taking in charge, by the same, of the jihaz, "contribution of the bride into the community."

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[779] An official report of these conventions is drawn up in this case by literate men when the fātih'a is pronounced; this is the only moment when an atmosphere of religious law reigns. A moment short and eccentric, in the proper sense of the term.

c) The "conjugal state," litihāl. Its first aspect, to which are attached magical, sentimental, and moral notions, is that of cohabitation and procreation.

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421 Under its second aspect, which is that of a society of work, it includes the right of the woman to her share of acquiescence (tizzla) among the other participants in the familial society (imezzalen), in equality with each of the latter, men or women, and once the deduction has been made for the contribution of the ones and the others. The marital contribution counts officially for a half out of the ensemble of acquiescence. That is a patrimonial praecipuum.

[562] The woman's right to her share is regarded as the counterpart of the tasks that custom imposes on her, according to a rigorous discrimination with regard to those that fall to the men. Today it is likewise regarded as compensation for the statutory modicity of the amerwas. This, however, is undoubtedly a reinterpretation.

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562 d) "Dissolution," uluf. The repudiation pronounced by the man is always definitive. The woman's liberation is authorized by the delivery of a document, tabrat, which she often requests by the judiciary route at the same time as her share of acquiescence. The woman may, as in the fiqh, judicially request the dissolution of the marriage on grounds (cruelty, impotence, etc.), submitted

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• (428) /350 cont./ Trace perhaps of an old principle of magical continuity; the succession is broken by the lack of a link: the grandson does not inherit from the grandfather if the latter has survived the father. In the orthodoxy itself diverse subterfuges have obviated the rigor of this principle. But they have known limitations to which the Seksawa system was not bound any more than its recourse to "substitution," tenzll, istirkab, remained in the statistically restricted proportions of the Mussulman institution. But the true problem was elsewhere.

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(ee1) The great event of the Seksawa family is the arrival of the child, boy or girl, at nubility, which makes him a co-operator. Questions are then found posed, which are all resolved, a remarkable thing, in a spirit, not of patriarchal indivision, but of /351/ accountancy. In effect, filiation creates rights at the same time as it does parents, and indeed beyond the mere capacity to inherit.

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421 First, a right to benefit from the familial society, and from the share of acquests proceeding from it; over and above this, for the daughter, there is the right to the "dotal marriage settlement," jihaz, to the "trousseau," aruku, at the time of marriage, to maintenance in case of widowhood or need. The son's economic autonomy is accentuated again by the practice of seasonal or permanent emigration. Finally, the separation of the goods, separation of usufruct and administration at the very least, is frequently obtained by the children even during the lifetime of the father. The act then takes the form of a habous, of a ccadaqa or of a waciyya. It is an anticipated testament in which often figures the strange stipulation by the constituent of a reserve for his benefit, which seems to imply immediate disseizin of the rest.

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175 /The following two paragraphs are in small type in the original source./ Thus in 1028 Heg.: 1619, at Alus, in Idaw Geryun, a fiqh /sic/ of the a. Umgan and his wife make a donation, cadaqa, to their grandchildren, of a property from which they exclude a "margin": the parcel of Taglagelt.

Again at Alus, an act of 1061 Heg.: 1651 describes the distribution of a patrimony among brothers. They operate with all the guarantees of technique and equity: "full agreement,

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593 generation, like new sediments, humble advances that the labor
421 of man realizes, such is the peasant ideal that this classic form
of the proceedings reveals. Primus brings against Secundus a
chchfifa resulting from the existence of a habous set up by his
great-grandfather. The purchase consented to by the father of
Primus, which Secundus is referring to, is then null. But Secundus
demonstrates that the foundation only dealt with an area far
smaller than the landed property now claimed and that such-and-
such extensions were realized, after the habous, by the grand-
father and the father. The discussion is then oriented toward veri-
fications of the civil state of the parcels by the production of old
"nominative inventories," jrida.

613 The division of labor between these familial co-operators
423 coincides most often with a landed-property indivision that may
branch out, over the lapse of several generations, indeed over the
whole history of an ikhs, into monstrous juridical arborescences.

• [428] The woman inheriting, in principle, on the pattern of the figh,
the minors and incompetents are then found most often enlisted in
vast agnatic solidarities, whose abuses find a corrective in the in-
security of established situations, imprescriptibility of rights, and
criticism of origin to which this milieu untiringly delivers any
possessions. Here again a sort of equilibrium at term is realized.
In time it is true: and several generations sometimes pass before
there is recovery. The disappearance of such-and-such individu-
als, of such-and-such families, by "extinction," for example,
inqirad, a theme that recurs quite often in the old acts, is not
free from ending in the constitution of a certain margin of "goods
without master," closely inventoried moreover in the conscious-
ness of the group, and which, tacitly, are the appanage of the
powerful of the day. Premium for individual appetites, and rudi-
ment of a domainal one.

613 Thus individual depredation and communal constraint encircle
671 the life of the ikhs. The modern law of the Sekawa has perhaps
made out of the exuberance relations of action and of reaction
established, on both sides of the ikhs, by these two rivals. Doubt-
lessly the gentilitial structure, evoked by unwritten laws of the

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[103] This new element will have made the analysis progress. It results from written testimony, and by no means from hypotheses more or less subject to caution. It reveals, in the comings and goings of the man, due to the difficulties of the times, a constancy that attaches it to a ground, and is not without aspects of a magico-religious order. This bond can survive the most violent vicissitudes. On the condition, undoubtedly, that the name survives. The primacy and the extreme conservation /356/ of toponyms in this part of the Atlas are perhaps the reason that this persistent legitimacy can be observed here to a degree unequaled, it seems, in the rest of North Africa.

[613] The last of these acts also supplies an important element. It is seen here that the equilibrium between the group and the ground may undergo modifications because of the intervention of the group. Consequently who knows if the patrimonial representation of the ikhs-s in the quarters does not reflect deliberate initiatives and, in short, measures of application of the first law?

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[436] However that may be, permanence and agitations of the landed life are fashioned according to figures that it will not be from an overly systematic logic to call tied between them. Now the instrument of the exchanges here is money: that which is amassed on the spot and that which is fetched from the outside. This is the double aspect of a monetarism that forms the unity among the so-called contradictory, and at the very least contrasting, aspects of the milieu. How these different economic or moral factors are ordered is what we are now going to try to elucidate.

Patrimonial Legitimacy Versus Possession

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[192] (1). And first of all the notion of patrimony exists in this society. The law, like the mores, expressly refers to it. This is the ddment

1. From the Arabic ad-dimna, plur. diman, "place smoked by the proximity of the

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/footnote 1 continued/ habitations." This semantic derivation was perhaps inspired by the analogy of Berb. tamazirt, "cropland," a general term in a whole portion of this linguistic domain, along with amazir, "manure." Hanoteau and Letourmeux seem to make a rapprochement between these two terms, La Kabylie et les coutumes kabyles /Kabylia and Kabyle customs/, 1873, t. I, p. 414.

corresponding to a notarial word, ad-dimna, semantically strange. In the settlements of acquests, a praecipuum of a half is always subtracted as representing the portion of what we would call the "family property," if this latter term did not much more precisely express the Seksawa habous. A fatwa /futwa/ of 1220 Heg.: 1805 (Tamt'ddit) illustrates the antiquity of the practice. "The Corf," it states, "sets aside half the goods for the dimna, by analogy with the commandite where a part of the initial capital is reserved. The remainder is acquests and accrues to its sharers." This conservatism nevertheless lets fuse here and there forces of evasion, wishes for rupture. Such more or less aberrant circumstances have sometimes permitted personalities, either introduced or local, to seek to break this sort of immanence of the ikhs-s in their soil.

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/357/ /The following two paragraphs are in small type in the original source./ Thus in 1147 Heg.: 1733 a "caid" from the piedmont, Lah'sen Twagga, implanting himself in the lower valley, affirmed: "All this land has never had a master — to one's knowledge — either in our time or under paganism or under Islam. It has not been reputed associated with anyone until the present Caid, the first, vivified it. And he vivified it in full by his means and those of his men. He put it in a state of "repletion" (Cimāra, in contrast to "desertic emptiness" or to "vacancy," khuluw). He remained there. He made a frequented bourg out of it. He dug a ditch there, not without setting apart a portion

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 [195] country is sold, a whole mountain canton. As an act of 1093
 [175] Heg.: 1687 says, "all of it is sold, including the jackal of the
 forest," jami^c mā la-hā ff dhi'b al-ghāba.

To the lineage revendication, a term that appears to correspond to the patrimonial constancy of the ikhs, is added yet another resource: the chchfāa. This is a matter of something much broader than the faculty of pre-emption that the fiqh offers to the joint-tenant /Fr. coindivisaire/ of the seller. It is not even excluded that formerly the son would have been allowed to put it in opposition to the sales of his own creator. Such a pre-tension, monstrous in the eyes of the Mussulman law, and moreover of logic, was in 1952 seriously brought before the Tribunal coutumier. In fact, what the Seksawa call chchfāa could be defined: "the exception drawn from the patrimonial maintenance." Sometimes, and this is the orthodox case, a relative intervenes in order to make the option work to his advantage; but by definition this form is as rare as the sale itself. In the generality of the cases, the exception comes to act a long time after the event, as a means of having a habous sale rescinded. I thus come to this institution, which, in Seksawa country, does not at all have its classic or even Maghrebi physiognomy.

Agnatic Sequestration

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 423 What is striking first of all is that in the Seksawa mountains the goods of a zaoula, such as the zaoula of Lalla Aziza, a rather large estate-holder /Fr. domainière/, have the characteristics of a private estate. Likewise the turn for water, for example, earmarked for the marabouts on the downstream séguia. On the other hand, the private goods in the mountains are habous most of the time (2).

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 562 2. This meaning of the habous has been seen clearly by J. Lafond, Les sources du droit coutumier dans le Sous /The sources of customary law in the Sous/, 1948, pp. 81 sq. In

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/footnote 2 continued/ theory, however, the woman's right to inherit is absolute. It is exercised not only in the margin, /this footnote is continued on the following page in the original source/ lh'āschit, that the "agnatic sequestration" lets exist, but it is a constant procedural theme. The women's share often being forgotten in the acts of sales, this will later bring about their annulment for all that concerns the women's share, and without prescription intervening. On the other hand, in neighboring societies, the Aghbar for example, if one is to believe the in. /unpublished/ monograph by Lepage, the woman cannot possess landed property in the Imsifern leff (a. Gasa, a. Tkssit, Amismatert). She may, on the contrary, in the Inghertit leff (a. Gāir, Imelwan, Iwensenkten).

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From these haboûs, pious devolution, even distant, /364/ is formally absent. That then is the extreme case of what has been observed nearly everywhere in North Africa under the name of "private habous," and where the exegesis has correctly seen a procedure of disinheritance of the women. Here the intention does not disguise itself by any stratagem, is crudely displayed. The founder specifies that, in case of extinction of the male branches, there will be a carry-over of the ensemble of the inheritance.

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War, emigration have sometimes posed this case. This is the so-called type of the inquirād'. It is rather frequent. An interesting fatwā of 1220 Heg.: 1805, emanating from a jurisconsult of the Imt'ddan, concludes with the help of texts that the carry-over of the habous should benefit only indigent heirs and in order of decreasing necessity (ih'tiyā). A second opinion, bracketed with the first one, is further supported by the judgment of the jurists of the Gezzula, utilized in his Ajwiba by ^cAbd Allah b. Ibrāhīm at-Tamulī. Ar-Rasmūki would have likewise judged in this manner.

7 794 /364 cont./
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In spite of these endeavors of the doctrine to reconcile the theory of pious affectation with a very different practice, the Seksawa habous is nothing other than an "agnatic sequestration." It does not even allege the intention of piety and sets itself up as pure testamentary modality. An incertitude has always marked it with respect to its effect upon inalienability: is the latter pleadable by the lessor himself or his beneficiaries? Can a convention of the latter at a given moment revoke it, in which case the woman's portions, originally ejected, would be claimed again on the mass? Seksawa jurisprudence is not closed on all these points. It is even interesting to note that this incertitude anciently provoked a legislating initiative.

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An undated document of the I. Geryun subordinates the inalienability of the habous to the absence of a contrary stipulation of the constituent. In 1287 Heg.: 1832 seven elders of the Bas /Lower/ Seksawa ordained that the consistence of the margin, lh'fchit, left for the benefit of the daughters will be one half of the fruits of the foundation, the other half returning to the habous. In this fruit is also included the product of sales, pledged loans, etc. "Such is the custom of the Deren and of the Dir," they solemnly added. But from all evidence such legislation aggravated the incertitude of this habous, which seems, to /365/ speak truthfully, not to have properly any content, except to open a recourse for the male heir against the woman, and especially for the descendant against the foreign acquirer. The right is identified here with the action, and it is probable that it is necessary to rank this habous and the chchfāa that threatens it among these procedural resources with an effect based upon surprise and feint, and whose role is so important in the unfolding of the litigation.

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The statistics of the habous in the mountain tribes would be quite interesting. Some twenty years ago, one of our officers noted that in three Idaw Mh'mud cantons (1),

1. Lieutenant Combe, in Les Habous de famille en Ida ou Mahmoud /The family habous in Ida ou Mahmoud/, 1932. He distinguishes two groups:

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/footnote 1 continued/ on the one side, a. Tunert, A. i-yzimmer, Irohalen; on the other, Ichkajjen, a. Dris.

against which the Seksawa are directly backed (a. Tunert, I. i-yzimmer, Irohalen), it is the totality of goods that is obligatorily "haboused": hence inalienability and disinheritance of women extending to the ensemble of the ground. Elsewhere it is a matter of a simple faculty, but so laid under contribution in the mountains of Imintanout that at the same period the proportion of habous was evaluated at two fifths of the tillable land. Twenty-five years ago the judiciary jemsā of the Demsira even expressed the wish that one half of all contested landed-property should be considered habous. This practice has not been retained. But it prevails in Haut /Upper/ Gedmiwa under the name of taḥqir (2).

2. But nothing may be concluded with certainty, the customary law of the Aghbar seeming to have undergone recent evolutions of an administrative order that have accentuated its imprecision. It appears to us today, much more than the Seksawa law, to be a "patoisant" /speaking with a provincial accent/ law, whether this character be ancient or acquired.

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On the other hand, scarcely any habous in Bas /Lower/ Seksawa, downstream from the confluence of the asif n-a. Lh'sen. A foundation of the protégé of Brives, Ah'med ou Bihi, at Tuz'z'umt, was regarded as an anomaly and gave rise to a long lawsuit: it is true that the wife of the founder was a foreigner from the Mtugga. Even lower, in the plain, permeable to outside influences, this form concerns, as in Arab countries, only a minority of "great families." It doubtlessly then finds the alibi of its pious intention. On the contrary, it is so frequent in the mountains that it is presumed of all land. But the customary judge opposes to this

794 /365 cont./ But the customary judge opposes to this
 428 exception /plea/ the necessity of establishing by "inventory,"
 (695) irida, the initial consistence of the properties on which the foundation bears. He opposes to it also — but since when? — the argument of peaceable possession exercised by the defendant, if nevertheless the claimant or his creators were present in the country. Obviously no conclusion can be drawn from these /366/ practices. There are mixed together here preoccupations of equity inspired by the French advisor, a concept of decennial prescription borrowed from the fiqh, and a general tendency toward the consolidation of acquired rights. So many recent evolutions.

121 This geographic distribution perhaps marks different stages of
 794 the institution. In this hypothesis, the "purest" one would be found upstream, and especially in these three I. Mh'mud cantons where the land is entirely immobilized. It is possible that that would be the original stage. But if it is, it is necessary to recognize that the parties' freedom, by a curious paradox, went further in the matter than the fiqh wished. At least among the Seksawa an express convention of the devolutionaries can free the landed property. Is that a matter of an eventuality more theoretical than effective? This is impossible to specify. In fact, as is known, the settlement of landed-property affairs took place "under the sign" of the fiqh and in any case in a climate completely different from that of the conflict. Therefore no jurisprudence that was not suspect of transposition at the very least. As for the oral tradition, today very much impaired by the progressive disappearance of the old people, and the influence of recent organizations, it becomes very subject to caution as soon as the problem becomes nuanced. It is too stuttering for one to be able to base anything precise on it.

794 One thing is sure, however. These foundations are subordi-
 428 nated to the stipulation of a "reserve" or "margin," lh'achit, to
 671 which the habous does not apply. This portion of the landed
 (562) property remains subject to the common law. The women benefit
 (184) from it, either by having it available as property or by only enjoying the usufruct. On these points the variety is very great between taqbilt-s and expresses complex evolutions. Nevertheless, and in all cases, the absence of lh'achit is a nullity. In a milieu as bereft of precision concerning the notarial practice, one weighs what this formalist rule will bring in the way of surprises in the course of proceedings. Quite often this unforeseen new thing will

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794 decide the litigation from a point on the whole secondary, like a
428 feint in a joust.
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That is a new chance opened up to the adversaries of the
habous, a new possibility of play, anything but negligible in the
spirit of the system. But what accumulated risks! The landed-
[423] property procedure of the Seksawa recalls the shows in which a
player must guide his ball through a multitude of snares and traps
to a very chancy issue. This issue, in the case at hand, is the
alienation of the land. And although it results from possibilities
opened up by the orthodox law, which one professes /367/ to
follow, and by the very form of juridical expression, one divines
at what point it remains improbable, and doubtful even in success.

General View of the Familial and Landed-Property Law

121 If one now groups the most striking aspects of the system, one
will realize that it is the triumph of Homo oeconomicus. Of the
rite and the tool, to return to the two antithetical notions from
which, for a Moroccan society moreover very different, Azem-
mour, the late Ch. Le Coeur drew his inspiration, it is by far the
second that occupies the foreground here. One might even say
the tool in the proper sense: namely, the peasant's hoe, this
agelzim that sculpts the tiers, distributes the water, inscribes, in
gains of a few square meters, the patient work of generations,
fashions this rural landscape, which is the most made that North
Africa knows. Workman's landscape...

121 But this impression is modified somewhat if one leaves the
671 domain of the law that is conscious, avowed, marked by its suc-
cessoral schematism, its litigious tricks concerning goods, its
ratiocinations concerning household life, in order to examine its
relations with the agrarian order. At this level a ceremonial
commentary, a sentimental context envelop words and gestures.
Agnatic solidarity appears as one of the active bases of the life
of the canton. But what remains of this structure once past the
threshold of judiciary debate, which is also the threshold of the
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* 634 /224 cont./
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/footnote 2 continued/ sullied by partiality than that of the inflas, whose rapacity is feared.

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[586] Marriages and divorces are concluded in his presence. He conducts the proceedings for the apportionment of inheritances and then appropriates a small part of the estates. He punishes according to the 'orf -- the custom -- crimes and offenses, and imposes the fines that are proper for each mistake. The money thus collected is divided into three parts: the first goes to the moqaddem; the second is for the taqbilt, which the inflas consider that they represent completely in this circumstance; the last part constitutes a small reserve fund for the expenses of hospitality.

[292] The moqaddem's authority varies according to his wealth and personal situation. If he is already, because of the power of his "ikhs," an important notable, he is seen, clothed in garb of his "225/ of white wool, which manifests his high rank, to deliberate, to fix the round of hospitality, to accept the "ar" protector relationship based on a conditional curse/ of foreigners who ask for protection, and to have given to one who offers him a sacrifice some grain and walnuts by contribution of the whole canton. He concludes alliances with neighboring cantons and presides at the "tinoubga," festivals given on the occasion of visits by foreign warriors. If the moqaddem, on the contrary, is a man without influence, he effaces himself before the "inflas" or the "Eawan," who compete to have all the disputes settled to the advantage of their family. When the year has passed, the moqaddem brings the inflas together and calls for his replacement. As an exception his post is renewed for a year, "if his magistrature has been happy," but never longer.

[178] As a result of the general tendency toward the development of personal power, people in the Haut-Atlas /High Atlas/ in our day somewhat scorn the effaced moqaddems who abide by the ancient tradition, according to which they would be only the agents of their brothers. One who does not know how to speak